

(H. B. 1277)

(No. 31-2013)

(Approved June 25, 2013)

AN ACT

To amend subsection (a)(1) of Section 3020.06 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to reduce the excise tax on gas oil and diesel oil from eight cents to four cents and provide for the allocation of such tax; amend subsections (a), (f), and (g) of Section 3020.07 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to modify the amount of the excise tax imposed, collected, and paid on crude oil, and partially finished and finished oil by-products and any other hydrocarbon mixture, and provide for a periodical inflation adjustment and a reasonable margin; amend Section 3060.11 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to allocate the proceeds from the excise tax on crude oil, and partially finished and finished oil by-products and any other hydrocarbon mixture to the Highways and Transportation Authority for its corporate purposes and allocate twenty million dollars (\$20,000,000) of the revenues from the excise tax on cigarettes collected every year to the Highways and Transportation Authority for its corporate purposes, and to allocate ten million dollars (\$10,000,000) of the revenues from the excise tax on cigarettes collected every year to the Metropolitan Bus Authority for its corporate purposes; and for other purposes.

STATEMENT OF MOTIVES

Currently, the Puerto Rico Highways and Transportation Authority (hereinafter the “Authority”) is undergoing a precarious situation caused by a decrease in its revenues, aggravated by additional burdens that have increased its operating costs. By June 30, 2012, the Authority carried an operational deficit of over \$187 million along with a capital improvement plan deficit of \$168 million. In summary, the Authority operates with a deficiency of approximately \$355 million annually, which has been corrected in the past by means of loans granted

by the Government Development Bank for Puerto Rico (BGF) to continue operating and meeting its obligations to its creditors. This practice began in 2008, when the Authority resorted to financing to cover its operations. By October 2009, the Authority did not have enough credit to refinance the Subordinated Bond Anticipation Notes Series 2008-A that it had with a private bank. Thus, the BGF found itself obliged to acquire such notes. During the 2009-2012 Administration, the fiscal situation of the Authority aggravated even more as a result of the practice of defraying its operational deficit through lines of credit with the GDB, which, during such period, amounted to \$2.113 billion and no repayment sources were identified to meet said obligations. The foregoing and the privatization of PR Road 22 and PR Road 5 deprived the Authority from a significant portion of the income it received on account of tolls.

Currently, the Authority lacks self-sufficiency. Given the structural deficit of the General Fund and the inability of the BGF to continue financing the operations of the Authority, it is imperative to identify other sources of income that allow the Authority to continue operating and repay such refinancing to the BGF. As of today, the outstanding loans of the Authority account for nearly 24% of the entire loan portfolio of the BGF.

In addition, the Authority's capacity to issue additional debts is not enough to defray its debt with the BGF, which, by March 31, 2013, amounted to \$2.163 billion. It does not have the capacity to cover the needs of its future capital improvement plan. This shows that the Authority needs more gross revenues to cover most of its debt and achieve a greater borrowing capacity.

The Authority's delicate fiscal situation has impaired it from tapping the bonds market to refinance its debt. The limited cash flow to cover its operations contributes to its inability to issue bonds, because it does not have the funds needed to make additional debt service payments.

This situation limits the repayment of outstanding financing with the GDB and will go on until the Authority starts receiving additional revenues to maintain and finance the development of the highways infrastructure of Puerto Rico.

This Legislative Assembly has considered other alternatives to raise the funds needed to address the Authority's current fiscal situation. Among the alternatives considered are to increase toll rates and to increase the tax on gasoline. However, the increase required to raise the funds needed to address the Authority's financial situation would have entailed increasing toll rates by 300%, increasing the vehicle registration sticker fee from \$40 to \$210 or increasing the tax on gasoline by more than nine cents (\$0.09) per liter of gasoline, this would have brought about an increase of approximately \$160 a year to fill the gasoline tank of a vehicle. Recognizing that these increases would be burdensome for the people, especially for the Island's working class, this Legislative Assembly has undertaken the task of finding other sources of income that are less burdensome for the people's wallet. Among the options considered are: a potential increase in the excise tax on the use in Puerto Rico of crude oil, and partially finished and finished oil by-products any other hydrocarbon mixture (excluding natural gas). This excise tax is paid by the importers of these products and not by the general public as in the case of the tax on gasoline. Moreover, this excise tax has remained unaltered for decades and it has neither been adjusted according to the realities of the oil market nor the inflation factor. Another option is to allocate a portion of the revenues from the tax on cigarettes to the Authority for its corporate purposes.

Currently, an excise tax is imposed, collected, and paid for the use in Puerto Rico of crude oil, partially finished and finished oil by-products, and any other hydrocarbon mixture (excluding natural gas), in accordance with the provisions of Section 3020.07 of Act No. 1-2011, as amended, known as the "Internal Revenue Code for a New Puerto Rico." Such excise tax is based on the price index

(as defined in Section 3020.07) per barrel of crude oil, which fluctuates in the market on a monthly basis. Section 3020.07 of the Internal Revenue Code for a New Puerto Rico provides that if the index price per barrel of crude oil is up to \$16.00, the excise tax will be \$6.00 per barrel; from \$16.01 to \$24.00, the excise tax will be \$5.00; from \$24.01 to \$28.00, the excise tax will be \$4.00; and over \$28.00, the excise tax will be \$3.00. Since 2005, the price index per barrel of crude oil exceeds \$28.00. Therefore, we have been collecting only \$3.00 per barrel of crude oil for the past eight (8) years. This Legislative Assembly deems it necessary to impose a fixed excise tax of \$9.25 on the use in Puerto Rico of crude oil, partially finished and finished oil by-products, and any other hydrocarbon mixture (excluding natural gas), in order to establish a stable source of income to address the financial needs of the Authority.

Furthermore, in order to prevent the income of the Authority from falling short on covering its operating expenses in the future, as a result of general increases of prices and operating costs, such excise tax shall be subject to a an inflation adjustment plus a reasonable margin. Such adjustment shall be effective every four years beginning on July 1, 2013, based on the annual average change of the United States Consumer Price Index (CPI) plus a one point five percent (1.5%) annual margin.

To reduce the impact that the excise tax on crude oil, partially finished and finished oil by-products, and any other hydrocarbon mixture (excluding natural gas) may have on gas oil or diesel oil consumers, the excise tax on gas oil and diesel oil is also reduced from eight cents to four cents.

Section 3060.11 of the Puerto Rico Internal Revenue Code of 2011 establishes that up to \$120,000,000 of the excise tax collected on the use in Puerto Rico of crude oil, partially finished and finished oil by-products, and any other hydrocarbon mixture (excluding natural gas) shall be covered into a special deposit

account in favor of the Authority for its corporate purposes. Given the Authority's difficult financial situation, this Legislative Assembly believes that the entire excise tax collected on account of the use in Puerto Rico of crude oil, partially finished and finished oil by-products, and any other hydrocarbon mixture (excluding natural gas) shall be covered into the special deposit in favor of the Authority. Thus, the \$120,000,000 cap of the excise tax imposed, collected, and paid for the use in Puerto Rico of crude oil, partially finished and finished oil by-products, and any other hydrocarbon mixture (excluding natural gas) is hereby eliminated. This shall ensure that sufficient funds are allocated to the Authority to continue operating and developing the highway infrastructure of Puerto Rico.

The establishment of a stable excise tax, the elimination of the \$120,000,000 cap, and implementation of other measures that are currently under the Authority's consideration to raise additional funds, shall allow the Authority to meet its current obligations to the GDB. As a result, the GDB will be relieved from the heavy burden that the Authority represents for its loan portfolio. Likewise, the Authority shall have additional resources to cover its operating expenses and invest in its capital improvement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (a) of Section 3020.06 of Act No. 1-2011, as amended, known as the "Internal Revenue Code for a New Puerto Rico," is hereby amended to read as follows:

"(a) An excise tax shall be imposed, collected, and paid as herein stated on each gallon or fraction thereof of the following fuels:

- (1) Gasoline.....16 cents
- (2) Aviation fuel.....3 cents
- (3) Gas oil or diesel oil4 cents
- (4) Any other fuel.....8 cents"

Section 2.- Subsections (a), (f), and (g) of Section 3020.07 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” are hereby amended to read as follows:

“(a) In addition to any other excise tax prescribed in this Subtitle, an excise tax shall be imposed, collected and paid for the use in Puerto Rico of crude oil, partially finished and finished oil by-products, and any other hydrocarbon mixture (excluding natural gas) of \$9.25 per barrel or fraction thereof.

(b) ...

(c) ...

(d) ...

(e) ...

(f) The excise tax shall be subject to an inflation adjustment plus a one point five percent (1.5%) annual margin. This adjustment shall be effective every four years beginning on July 1, 2013, based on the annual average change of the Consumer Price Index plus a one point five percent (1.5%) annual margin; the first adjustment shall be effective on July 1, 2017. Every inflation adjustment to be made every four years shall take into account: (i) the annual effect of the inflation adjustment plus the one point five percent (1.5%) annual margin combined annually for the four-year period; and (ii) the adjusted amount in the preceding four-year period.

(g) For the purposes of this Section, ‘Consumer Price Index’ shall mean the United States City Averages for all Urban Consumers, All Items” published by the Bureau of Labor Statistics of the United States Department of Labor; provided however, that if the Bureau of Labor Statistics of the United States Department of Labor ceases to publish such index, ‘Consumer Price Index’ for the purposes of this Section shall be the index substituting or replacing it.

(h) ...

- (i) ...
- (j) ...
- (k) ...
- (l) ...
- (m) ...
- (n) ...”

Section 3.- Section 3060.11 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” is hereby amended to read as follows:

“(a) The proceeds from taxes and license fees collected by virtue of this Subtitle shall be covered into the General Fund of the Treasury of Puerto Rico except as provided below:

(1) The sum of the tax collected on gasoline and four cents (4¢) of the gas oil or diesel oil tax established by Section 3020.06 of this Subtitle, and the total amount per fiscal year of the excise tax collected for crude oil, partially finished and finished oil by-products, and any other hydrocarbon mixtures established in Section 3020.07 of this Subtitle, shall be covered into a special deposit in favor of the Highways and Transportation Authority for its corporate purposes.

(A) The Secretary shall transfer every month, or as agreed on with the Highways and Transportation Authority, the amounts covered into said special deposit, deducting from these the amounts reimbursed according to the provisions of Section 3030.19 and 3030.20 of this Subtitle.

- (B) ...
- (C) ...

(D) ...

(E) In case the amount of the proceeds of the tax on gasoline, gas oil, or diesel oil established in Section 3020.06 or the amount of the excise tax on crude oil, partially finished and finished oil by-products, and any other mixture of hydrocarbons established in Section 3020.07, appropriated or to be appropriated in the future to the Highways and Transportation Authority may at any time be insufficient to pay the principal of and the interest on the bonds or other obligations over money taken on a loan or issued by the Highways and Transportation Authority to defray the cost of traffic facilities and for the payment of which the proceeds of the tax imposed on gasoline, gas oil, or diesel oil established in Section 3020.06 or the amount of the excise tax assessed on crude oil, partially finished and finished oil by-products, and any other mixture of hydrocarbons established in Section 3020.07, has been pledged and the reserve funds of the Highways and Transportation Authority for the payment of debt requirements are applied to cover the deficiency in the amount needed to make such payments, the amounts of said reserve fund used to cover said deficiency shall be reimbursed to the Highways and Transportation Authority from the first proceeds received on the next fiscal year or subsequent fiscal years by the Government of Puerto Rico from: (1) any other taxes in effect on any other fuel or propellant used, among other purposes, to propel road vehicles; and (2) any remaining portion of the tax on gasoline, gas oil, or diesel oil established in Section 3020.06 that are in effect. The proceeds of such other taxes and the remaining portion of the tax on gasoline and gas oil or diesel oil established in Section 3020.06 that are to be used as provided in this Section to reimburse the reserve funds for debt requirements, shall not be covered into the General Fund of the Government of Puerto Rico when collected, but shall be covered into the aforementioned special deposit for the benefit of the Highways and Transportation

Authority of Puerto Rico and subject to the provisions of Section 8 of Article VI of the Constitution of Puerto Rico, to be used to reimburse said reserve fund for the payment of the debt requirements.

(2) The four cents (4¢) of the tax on gas oil or diesel oil established in Section 3020.06 shall be covered into a special deposit in favor of the Highways and Transportation Authority as provided in subsection (a)(1) of this Section. The Department of Transportation and Public Works and the Highways and Transportation Authority, in conjunction with and with the advice of the Government Development Bank for Puerto Rico, are hereby authorized to assist the Metropolitan Bus Authority, if necessary, to restructure its debt backed in any way by the tax on gas oil or diesel oil prior to the approval of this Act. The Metropolitan Bus Authority is hereby authorized to substitute the pledge or lien securing any revenues it may receive from the tax on gas oil or diesel oil prior to the approval of this Act.

(3) The revenues collected from the tax on cigarettes established in Section 3020.05 of this Subtitle up to twenty million dollars (\$20,000,000) per fiscal year shall be covered into a special deposit account in favor of the Highways and Transportation Authority for its corporate powers and purposes.

(A) The Secretary shall transfer every month or as agreed on with the Highways and Transportation Authority, the amounts covered into such special deposit account, deducting therefrom any amounts reimbursed in accordance with the provisions of Section 3030.18 of this Subtitle.

(B) The Secretary shall pay such twenty million dollars (\$20,000,000) every fiscal year from the excise tax on cigarettes established in Section 3020.05 of this Subtitle in monthly contributions of up to two million five hundred thousand dollars (\$2,500,000). If during any month of the fiscal year the revenues from the said excise tax do not suffice to make the two million five

hundred thousand dollar (\$2,500,000) payment provided herein, the Secretary shall cover such deficiency using any excess of the two million five hundred thousand dollars (\$2,500,000) revenues collected on account of such excise tax on previous or subsequent months of the same fiscal year.

(C) The Highways and Transportation Authority is hereby authorized to pledge or encumber the proceeds from the excise tax on cigarettes established in Section 3020.05 for the payment of the principal of and interest on any bonds or other obligation or for any other lawful purpose of the Authority. Such pledge or encumbrance shall be subject to the provisions of Section 8 of Article VI of the Constitution of Puerto Rico. The proceeds from such taxes shall be used solely for the payment of the interest on and amortization of the public debt, as provided in Section 8 of Article VI of the Constitution of the Government of Puerto Rico, insofar as the other available resources referred to in said Section do not suffice to attain such purposes. Otherwise, the proceeds from said tax, in the necessary amount, shall be used solely for the payment of principal of and interest on the bonds and other obligations of the Authority and to meet any stipulation agreed on by the Authority to the holders of its bonds and other obligations.

(4) The revenues collected from the tax on cigarettes established in Section 3020.05 of this Subtitle up to ten million dollars (\$10,000,000) per fiscal year shall be covered into a special deposit account in favor of the Metropolitan Bus Authority for its corporate powers and purposes. The ten million dollars (\$10,000,000) per fiscal year to be covered into the special deposit account shall be the second priority and contingent on the deposit of twenty million dollars (20,000,000) from the revenues collected from the tax on cigarettes established in Section 3020.05 of this Subtitle into the special deposit account in favor of the Highways and Transportation Authority as provided in subsection (a)(30) of this Section.

(A) The Secretary shall transfer every month or as agreed with the Metropolitan Bus Authority, the amounts covered into such special deposit account, deducting therefrom any amounts reimbursed in accordance with the provisions of Section 3030.18 of this Subtitle.

(B) The Secretary shall pay such ten million dollars (\$10,000,000) every fiscal year from the excise tax on cigarettes established in Section 3020.05 of this Subtitle in monthly contributions of up to eight hundred thousand dollars (\$800,000). If during any month of the fiscal year the revenues from the said excise tax are not sufficient to make the eight hundred thousand dollar (\$800,000) monthly payment provided herein, the Secretary shall cover such deficiency using any excess of the eight hundred thousand dollars (\$800,000) revenues collected on account of such excise tax on previous or subsequent months of the same fiscal year.

(C) The Metropolitan Bus Authority is hereby authorized to pledge or encumber the proceeds from the excise tax on cigarettes established in Section 3020.05 for the payment of the principal of and interest on any bonds or other obligation or for any other lawful purpose of the Metropolitan Bus Authority. Such pledge or encumbrance shall be subject to the provisions of Section 8 of Article VI of the Constitution of Puerto Rico. The proceeds from such taxes shall be used solely for the payment of the interest on and amortization of the public debt, as provided in Section 8 of Article VI of the Constitution of Puerto Rico, insofar as the other available resources referred to in said Section do not suffice to attain such purposes. Otherwise, the proceeds from said tax, in the necessary amount, shall be used solely for the payment of principal of and interest on the bonds and other obligations of the Metropolitan Bus Authority and to meet any stipulation agreed on by the Metropolitan Bus Authority to the holders of its bonds and other obligations.

The Secretary shall transfer from time to time, as agreed on with the Authority, the amounts covered into the special deposit, deducting from these the amounts reimbursable according to the provisions of Sections 3030.19 and 3030.20 of this Subtitle.”

Section 4.- Effectiveness.-

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 31-2013 (H. B. 1277)** of the **1st Session of the 17th Legislature** of Puerto Rico:

AN ACT to amend subsection (a)(1) of Section 3020.06 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to reduce the excise tax on gas oil and diesel oil from eight cents to four cents and provide for the allocation of such tax; amend subsections (a), (f), and (g) of Section 3020.07 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to modify the amount of the excise tax imposed, collected, and paid on crude oil, and partially finished and finished oil by-products and any other hydrocarbon mixture, and provide for a periodical inflation adjustment and a reasonable margin; etc.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 28th day of March, 2014.

Juan Luis Martínez Martínez
Acting Director